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January 15, 2002

Trade Policy Staff Committee  
Gloria Blue  
Executive Secretary, TPSC  
Office of the USTR  
600 17th Street, N.W.  
Washington, D.C. 20508

Re: *Steel*, Section 203 Action – Kanzen Tetsu response brief on stainless steel  
flanges and fittings and Commission tied vote on injury

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Dear Ms. Blue:

This letter is filed on behalf of Kanzen Tetsu, Sdn, Bhd (Kanzen Tetsu), a producer of stainless steel flanges and fittings in Malaysia, in response to the submission filed January 4, 2002 by domestic producers of stainless steel flanges and fittings (*see* Domestic industry comments on the TPSC's Evaluation of Options for Action Under Section 302, dated January 4, 2002) and opportunity to comment noticed in the *Federal Register* (*see* 66 Fed. Reg. 54,321 (Oct. 26, 2001); 66 Fed. Reg. 59,599 (Nov. 29, 2001); 66 Fed. Reg. 67,349 (Dec. 28, 2001)).

The domestic producers incorrectly assert that “the ITC has made an affirmative finding of serious injury to the domestic industry producing stainless steel flanges and fittings by reason of increased imports.” (*see id.* at 2). In fact, the Commissioners were equally divided 3 to 3 on their vote on injury with respect to stainless steel flanges and fittings. Under such circumstances,

the President is authorized to select which determination is to be considered the determination of the Commission (*see* 19 U.S.C. § 1330(d)(1)).

The President should adopt the determination of the 3 Commissioners voting negative with regard to stainless steel flanges and fittings as the determination of the Commission. The Commissioners voting in the negative found no significant overall impairment in the condition of the industry (*i.e.*, no “serious injury”). They based their determination on a thorough evaluation of the totality of the circumstances, including a lack of significant idling of productive facilities. Moreover, they found high and consistent operating profitability throughout the period of investigation (*see* USITC Pub. 3479 Vol. I at 250-251). Based on these factors and others identified in their views and determination, these Commissioners found a lack of significant overall impairment to the industry and consequently a lack of serious injury to the domestic producers of stainless steel flanges and fittings.

These Commissioners also found a lack of correlation between the condition of the domestic industry and the level of imports over the period of investigation (*see id.* at 251). Indeed, in their determination, these Commissioners specifically relied on the fact that the “operating income levels improve considerably during the last year and a half of the period of investigation” (*Id.* at 252).

Conversely, the Commissioners voting in the affirmative ignored this substantial evidence. They relied on the fact that some of the domestic producers’ financial indicators slightly declined over the period of investigation but failed to recognize that even though the levels declined, they declined from *very* high levels to levels that were still extremely high. In

other words, the financial indicators of the domestic industry were still very sound and healthy and evidenced an industry far from seriously injured. The Commissioners voting in the affirmative also ignored the evidence demonstrating a lack of correlation between the industry financial indicators and the import levels over the period of investigation. This lack of correlation negates the possibility that the imports were a substantial cause of the domestic industry's condition.

For these reasons, the President should adopt the determination of the Commissioners voting negative with respect to stainless steel flanges and fittings as the determination of the Commission with respect to this product and domestic industry. Should the President adopt the affirmative determination, alternatively, he should exclude stainless steel flanges and fittings from Malaysia from any remedy imposed under the developing country exclusion requirement of Article 9.1 of the WTO Safeguards Agreement. This issue is addressed in the submission filed under separate cover by Kanzen Tetsu along with other developing country parties.

Respectfully submitted,



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